

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

LACKMANN CULINARY SERVICES  
Employer

and

Case No. 29-RC-11582

LOCAL 1102, RETAIL, WHOLESALE &  
DEPARTMENT STORE UNION, UNITED  
FOOD AND COMMERCIAL WORKERS  
Petitioner

**SUPPLEMENTAL DECISION ON OBJECTIONS  
AND NOTICE OF HEARING**

Upon a petition filed on April 7, 2008,<sup>1</sup> by Local 1102, Retail, Wholesale & Department Store Union, United Food and Commercial Workers, herein called the Petitioner or the Union, and pursuant to a Decision and Direction of Election issued by the undersigned on April 23, an election by secret ballot was conducted on May 12, among the employees of Lackmann Culinary Services, herein called the Employer, in the following unit:

All full-time and regular part-time food service employees and cashiers employed by the Employer at California Deli and Dutch Treats, both located at Hofstra University, in Hempstead, New York, but excluding office clerical workers, guards and supervisors as defined in Section 2(11) of the Act.

The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations showed the following results:

Approximate number of eligible voters . . . . .	24
Number of void ballots. . . . .	0
Number of votes cast for the Petitioner . . . . .	8
Number of votes cast against participating labor organization. . . . .	10

---

<sup>1</sup> All dates hereinafter are in 2008 unless otherwise indicated.

Number of valid votes counted . . . . .	18
Number of challenged ballots . . . . .	1
Number of valid votes counted plus challenged ballots .	19

Challenges are not sufficient in number to affect the results of the election.

A majority of the valid votes counted plus challenged ballots has not been cast for the Petitioner.

Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election. The Petitioner's objections are attached hereto as Exhibit "A".

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned objections, during which the parties were afforded full opportunity to submit evidence bearing on the issues. The undersigned also caused an independent investigation to be conducted. The investigation revealed the following:

The Employer is engaged in the business of providing food services to facilities and organizations throughout New York, among them the California Deli and the Dutch Treats facilities at Hofstra University, Hempstead, New York, herein called the Hempstead facility.

**Objection Nos. 1 and 2:**

In these objections, the Petitioner contends essentially that since on or about May 5, 2008, through the date of the election, the Employer promised wage increases to bargaining unit employees if they voted against the Petitioner<sup>2</sup> and promised to pay employees additional monies for voting in the election.<sup>3</sup> The Employer generally denies engaging in objectionable conduct. For the reasons described herein, I direct that a hearing be held concerning Objection Nos. 1 and 2.

---

<sup>2</sup> Objection No. 1.

<sup>3</sup> Objection No. 2.

In support of Objection No. 1, the Petitioner submitted an offer of proof summarizing the testimony of one employee witness. The Petitioner contends its witness would testify that during the critical period, the Employer, by unnamed agents, promised wage increases to bargaining unit employees if they voted against the Petitioner.

In support of Objection No. 2, the Petitioner submitted an offer of proof summarizing the testimony of one employee witness. The Petitioner contends that its witness will testify that during the critical period, the Employer, by unnamed agents, promised to pay employees additional monies for voting in the election.

As noted above, the Employer generally denies engaging in objectionable conduct.

Here, the Petitioner's offer of proof does not present all of the circumstances surrounding the alleged objectionable conduct. However, in my view, the better course is to send to hearing the foregoing alleged conduct set forth in Objection Nos. 1 and 2, since, if true, such conduct could have affected the outcome of the election and would therefore warrant setting aside the election.<sup>4</sup> Inasmuch as there are substantial and material issues, including issues of fact and credibility that would be best resolved by a hearing, I direct that a hearing be held before a hearing officer concerning Objection Nos. 1 and 2.

---

<sup>4</sup> With regard to inducements for voting against the Union, see *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964). See also, *VJNH, Inc. d/b/a Vestal Nursing Center*, 328 NLRB 87 (1999) (where an employer's increased holiday and attendance bonuses to employees were held objectionable grants of benefits); *Baker Brush Co.*, 233 NLRB 561 (1977) (where an employer's gift of Thanksgiving turkeys to its employees was found objectionable.) With regard to offering to pay employees to vote in the election, see, *Broward County Health Corporation d/b/a Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995) (where the Board held that monetary payments offered to employees as a reward for coming to a Board election and that exceed reimbursement for actual transportation expenses constitutes objectionable conduct.)

### **Objection No. 3:**

In this objection, the Petitioner contends that by these and other acts, the Employer interfered with the conduct of the election, destroyed laboratory conditions and interfered with the employees' exercise of their right to vote in an atmosphere free from restraint, coercion and interference, warranting a new election. The Employer generally denies engaging in objectionable conduct. For the reasons described herein, I overrule Objection No. 3.

In support of this objection, the Petitioner, in its May 20 offer of proof, alleges that the Employer failed to provide a complete list of eligible voters containing the voters' names and addresses prior to ten days before the election as required by the Board's decision in *Excelsior Underwear Inc.*<sup>5</sup> More specifically, the Petitioner contends that the *Excelsior* list included the names of 23 individuals, but failed to list the names and addresses of the following 8 eligible voters: Maria Cristina Perez; Michael Shinn; Margie Etheridge Corley; Tita Cannon; Carlos Bonaparte; Jose Inteniano; Natacha Fequiere and Yecenia Umanzo.

As noted above, the Employer generally denies engaging in objectionable conduct.

Here, the Petitioner, in its evidence in support of objections, raises an allegation of misconduct unrelated to its timely filed objections.<sup>6</sup> In this regard, it is well established that a party cannot expand timely filed objections by furnishing evidence of unrelated objections unless it establishes by clear and convincing proof that the evidence is newly discovered and was previously unavailable. *Rhone-Poulenc, Inc.*, 271 NLRB 1008, enf. 789

---

<sup>5</sup> Under the Board's *Excelsior* rule, an employer must file with the Regional Director an election eligibility list containing the names and addresses of all eligible voters within 7 days after either the approval by the Regional Director of an election agreement or the issuance of a Direction of Election, and no extension of time is granted except in extraordinary circumstances. *Excelsior Underwear*, 156 NLRB 1236 (1966).

<sup>6</sup> Section 102.69(a) of the Board's Rules and Regulations provides that within 7 days after the tally of ballots has been prepared, a party may file objections to conduct of the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor.

F.2d 188 (1st Cir. 1986); *Burns International Security Services, Inc.*, 256 NLRB 959 (1981); *John W. Galbreath*, 288 NLRB 876 (1988); *Local Joint Executive Board of Las Vegas, Culinary Workers Union Local 226 (Santa Fe Hotel & Casino)*, 318 NLRB 829, 837 (1995). Here, the evidence concerning the Employer's failure to provide a complete *Excelsior* list, was submitted by the Petitioner on May 20, 8 days after the election, with no claim or evidence that it was newly discovered and previously unavailable. Indeed, the independent investigation established that before the May 12 election, the Petitioner, by letter dated May 5, advised the Regional Office that the Employer omitted the names of 7 eligible employees from the *Excelsior* list. In view of the foregoing, since the untimely allegation is unrelated to the timely filed objections, and since the Petitioner has not met its burden of proof that the evidence was both newly discovered and previously unavailable, it cannot be considered. See *Rhone-Poulenc, Inc.*, supra. (where an employer included additional allegations and supporting evidence within the time allowed for submission of supporting evidence on the original objections, the Board found such additional allegations, which were unrelated to the original objections, untimely inasmuch as the employer failed to show that the evidence was not newly discovered and previously unavailable). See also *Burns International Security Services, Inc.*, 256 NLRB 959 (1981). To hold otherwise would tolerate "piecemeal submissions" of objections, an undesirable consequence.<sup>7</sup>

### **SUMMARY AND RECOMMENDATIONS**

In summary, I have directed that a hearing be held on Objection Nos. 1 and 2. I have also

---

<sup>7</sup> See: *Framed Picture Enterprise*, 303 NLRB 722 fn. 1(1991) (where the Board distinguished *Rhone-Poulenc, Inc.*, 271 NLRB 1008, and *Burns International Security Services, Inc.*, 256 NLRB 959 (1981) from a case where there was no attempt to file late or supplemental objections and the information received by the Regional Director was previously obtained during the investigation of an unfair labor practice charge.)

overruled Objection No. 3.

Accordingly, pursuant to the authority vested in the undersigned by the National Labor Relations Board, herein called the Board,

**IT IS HEREBY ORDERED** that a hearing be held before a duly designated hearing officer with respect to the issues raised by Objection Nos. 1 and 2.

**IT IS FURTHER ORDERED** that the hearing officer designated for the purposes of conducting such hearing shall prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board, as to the issues raised. Within fourteen (14) days from the date of the issuance of such report, any party may file Exceptions to the report, with supporting briefs, if desired. Immediately upon the filing of such Exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, upon the other parties. A statement of service shall be made to the undersigned simultaneously with the filing of Exceptions. If no Exceptions are filed thereto, the Board upon the expiration of the period for filing such Exceptions, may decide the matter forthwith upon the record or make any other disposition of the case.

**PLEASE TAKE NOTICE** that at 9:30 a.m. on June 4, 2008, and on consecutive days thereafter until concluded, at Two MetroTech Center, 5th Floor, Brooklyn, New York, a hearing will be conducted before a hearing officer of the National Labor Relations Board on the issues set forth in the above Report, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony.

#### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 and 102.69 of the Board's Rules and Regulations, a Request for Review of this Supplemental Decision may be filed with the National Labor

Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-001. The Request must be received by the Board in Washington, D.C., on or before June 11, 2008.<sup>8</sup>

The parties are advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described Request for Review electronically, please refer to the guidance which can be found under “E-Gov” on the National Labor Relations Board website: [www.nlrb.gov](http://www.nlrb.gov).

Signed at Brooklyn, New York, on this 28<sup>th</sup> day of May, 2008.

---

Alvin Blyer  
Regional Director  
Region 29  
National Labor Relations Board  
Two MetroTech Center, 5th Floor  
Brooklyn, New York 11201

---

<sup>8</sup> Under the provisions of Section 102.69(g) (3) of the Board’s Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections, and which are not included in the Regional Director’s Supplemental Decision, are not part of the record before the Board unless appended to the Request for Review or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Regional Director’s Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.